

# Employee Benefit Plans

## Explanation No. 14

### Section 436 Limitations

#### Defined Benefit Plans

**Note:**

Plans submitted during the Cycle C submission period must satisfy the applicable changes in plan qualification requirements listed in Section IV of Notice 2012-76, 2012-52 I.R.B. 775 (the 2012 Cumulative List).

This publication contains copies of:  
Form 14582, Worksheet 14  
Form 14583, Deficiency Checksheet 14

These forms are included as examples only and should not be completed and returned to the Internal Revenue Service.

The purpose of the Worksheet Number 14 (Form 14582) and this explanation is to identify major problems with respect to the limitations under section 436. However, there may be issues not mentioned in the worksheet that could affect the plan's qualification.

The worksheet applies only to plans to which Internal Revenue Code section 436 applies, that is, single employer defined benefit plans (including multiple employer plans) that are subject to the minimum funding requirements of section 412. Thus, the worksheet does not apply to governmental plans and nonelecting church plans.

Generally, a "Yes" answer to a question on the worksheet indicates a favorable conclusion while a "No" answer signals a problem concerning plan qualification. This rule may be altered by specific instructions for a given question. Please explain any "No" answer in the space provided on the worksheet.

The sections cited at the end of each paragraph of explanation are to the Internal Revenue Code, the Income Tax Regulations; and the Department of Labor (DOL) Regulations; Rev. Rul. means Revenue Ruling.



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The technical principles in this publication may be changed by future regulations or guidelines.

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**I. Plans Required to Satisfy Section 436**

**Line a.** Section 412 provides minimum funding requirements that generally apply to pension plans qualified under section 401(a) or 403(a), other than governmental plans within the meaning of section 414(d), church plans within the meaning of section 414(e) with respect to which the election provided by section 410(d) has not been made, and certain insurance contract plans described in section 412(e)(3). Section 430, which was added by the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, specifies the minimum funding requirements that apply to single employer defined benefit pension plans (including multiple employer plans) pursuant to section 412. Section 401(a)(29) requires single employer defined benefit plans (including multiple employer plans) that are subject to the minimum funding requirements of section 412 to meet the requirements of section 436.

401(a)(29), 412  
1.436-1(a)(1)

Section 436, which was also added by PPA '06, sets forth a series of limitations on the accrual and payment of benefits under an underfunded plan. The payments that are limited by section 436 include payments of unpredictable contingent event benefits, as defined in Regs. section 1.436-1(j)(9), and prohibited payments, as defined in Regs. Section 1.436-1(j)(6).

In general, a benefit is an unpredictable contingent event benefit to the extent that it would not be paid but for a plant shutdown or similar event, or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or the occurrence of death or disability.

A prohibited payment means, in general, a payment for a month that exceeds the monthly amount paid under a straight life annuity (plus any social security supplements described in the last sentence of section 411(a)(9) of the Code). Any payment for the purchase of an irrevocable commitment from an insurer to pay benefits is also a prohibited payment. Certain transfers of assets and liabilities to another plan of the employer (or the employer's controlled group) may also be prohibited payments. Thus, the limitation on payment of prohibited payments may apply to a plan even if the plan does not offer single sum or other accelerated distributions.

A plan's adjusted funding target attainment percentage (as defined in section 436(j) (AFTAP)) for the plan year, as certified by the plan's enrolled actuary or determined under the presumption rules of section 436(h), is used to determine whether the plan is underfunded for purposes of the limitations under section 436.

Section 436(f) sets forth rules relating to contributions and other methods that a plan sponsor may use to avoid the limitations under section 436. See sections 436(b)(2), (c)(2), (e)(2), and (f) and Regs. section 1.436-1(f) for rules relating to employer contributions and other methods that may be used to avoid or terminate the application of the limitations under section 436 for a plan year. In general, the methods a plan sponsor may use to avoid or terminate one or more of the benefit limitations for a plan year include (1) making employer contributions and elections to increase the amount of plan assets which are taken into account in determining the AFTAP, (2) making an employer contribution specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations (a "section 436 contribution,") or (3) providing security to the plan.

436  
1.436-1

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**Lines b. and c.** Notice 2011-96, 2011-62 I.R.B. 915, contains a sample amendment that sponsors may adopt to satisfy the requirements of section 436. A sponsor who adopts the sample amendment is generally entitled to reliance that its plan language satisfies section 436, provided the amendment is timely adopted and the sponsor does not make any material changes to the sample amendment. In general, the sample amendment may be modified without adversely affecting reliance to conform the amendment to a plan's terminology or organization, to specify the effective dates of optional provisions of the amendment, and to specify the general effective date of the amendment in the case of collectively bargained plans and certain other plans for which section 436 is effective later than the date set forth in the sample amendment. If the plan sponsor has adopted the sample amendment and is entitled to reliance on the amendment, the remainder of the worksheet should not be completed.

*Notice 2011-96, as modified by Notice 2012-70, 2012-51 I.R.B. 712.*

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**Line d.** The limitations on prohibited payments do not apply for a plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the plan year, provide for no benefit accruals with respect to any participants. This exception will cease to apply as of the date any benefits accrue under the plan or the date on which a plan amendment that increases benefits takes effect (including cost-of-living increases in the benefit limitation under section 415(b)).

Plan language reflecting the benefit limitations under section 436(d) is required (with a reference to the exemption for frozen plans) even if the plan is currently exempt from these restrictions, so that the plan language

will automatically address these restrictions in the event that the plan is later amended in a way that voids the exemption.

436(d)(4)

## II. Definitions and Incorporation of Regulations

**Line a.** Plan provisions that set forth the limitations of section 436 must define several terms that are unique to section 436 or generally not otherwise defined in a plan. A plan may define these terms by incorporating by reference the definition under the regulations. The terms that must generally be defined and the regulation citations for the definitions of each term are as follows:

- (i) Adjusted funding target attainment percentage (AFTAP) – 1.436-1(j)(1);
- (ii) Annuity starting date (ASD) – 1.436-1(j)(2);
- (iii) Prohibited payment – 1.436-1(j)(6);
- (iv) Section 436 measurement date – 1.436-1(j)(8);
- (v) Unpredictable contingent event – 1.436-1(j)(9);
- (vi) Unpredictable contingent event benefit – 1.436-1(j)(9); and
- (vii) Inclusive presumed AFTAP – 1.436-1(g)(2)(iii).

1.436-1(j)  
1.436-1(g)(2)(iii)

**Line b.** Some of the provisions of the regulations under section 436 are too detailed and lengthy to be set forth fully in a plan amendment. Accordingly, a plan should provide that its provisions relating to the limitations of section 436 shall be interpreted and administered in accordance with section 436 and Regs. section 1.436-1.

1.436-1  
Notice 2011-96

## III. AFTAP Less Than 80 Percent But Not Less Than 60 Percent

**Line a.** A plan must provide that when its AFTAP for the plan year is less than 80 percent, but not less than 60 percent, section 436(d)(3) generally limits the portion of a benefit that may be paid in a single sum or other prohibited payment (that is, in general, a payment greater than the amount that would be paid under a straight life annuity).

Under this provision, a participant or beneficiary may not elect and may not be paid an optional form of benefit that includes a prohibited payment with an ASD on or after the applicable section 436 measurement date, unless the present value of the portion of the benefit

being paid in a prohibited payment does not exceed the lesser of:

- (i) 50 percent of the present value of the benefit payable in the optional form that includes the prohibited payment; or
- (ii) 100 percent of the PBGC maximum benefit guarantee amount (as defined in Regs. section 1.436-1(d)(3)(iii)(C)).

This limitation does not apply to any payment of a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).

If an optional form of benefit that is otherwise available under the terms of the plan is not available to a participant or beneficiary as of the ASD because of the limitation described in this line III.a., the participant or beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in Regs. section 1.436-1(d)(3)(iii)(D)). The participant or beneficiary may also elect any other optional form of benefit otherwise available under the plan at that ASD that would satisfy the 50 percent/PBGC maximum benefit guarantee amount limitation described above, or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the plan.

436(d)(3)  
1.436-1(d)(3)

**Line b.** A plan must also provide that when a plan's AFTAP for the plan year is less than 80 percent, but not less than 60 percent, the plan may not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment unless the present value of the portion of the benefit being paid in a prohibited payment does not exceed the limit described in line II.a.

436(d)(3)  
1.436-1(d)(3)

**Line c.** When a plan's AFTAP for the plan year is less than 80 percent, but not less than 60 percent, section 436(c)(1) generally prohibits a plan amendment from taking effect if the amendment increases the liabilities of the plan by increasing benefits and the plan's AFTAP for the plan year is less than 80 percent or would be less than 80 percent taking into account the amendment.

This limitation does not apply to any amendment to the plan that provides a benefit increase under a plan formula that is not based on compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of participants covered by the amendment.

436(c)(1)

1.436-1(c)

**IV. AFTAP Less Than 60 Percent**

**Line a.** A plan must provide that when its AFTAP for the plan year is less than 60 percent, section 436(d)(1) prohibits the payment of prohibited payments as defined in Regs. section 1.436-1(j)(6). In this case, a participant or beneficiary may not elect and may not be paid an optional form of benefit that includes a prohibited payment with an ASD on or after the applicable section 436 measurement date.

This limitation does not apply to any payment of a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).

436(d)(1)  
1.436-1(d)(1)

**Line b.** A plan must also provide that when its AFTAP for the plan year is less than 60 percent, the plan also may not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment.

436(d)(1)  
1.436-1(d)(1)

**Line c.** A plan may not pay an unpredictable contingent event benefit with respect to any unpredictable contingent event occurring during the plan year if the plan's AFTAP for the plan year is less than 60 percent or would be less than 60 percent if the AFTAP were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the plan year is 100 percent.

436(b)(1)  
1.436-1(b)

**Line d.** When a plan's AFTAP for the plan year is less than 60 percent, benefit accruals under the plan must cease as of the applicable section 436 measurement date and the plan may not be amended to increase plan liabilities by increasing benefits or establishing new benefits, even if an additional contribution is made under section 436(c)(2) or the amendment qualifies for the exception for certain benefit increases under section 436(c)(3).

436(e)(1)  
1.436-1(e)

**Line e.** If a plan accepts rollovers from a defined contribution plan to provide additional annuity benefits,

the plan is not permitted to accept those rollovers if the plan's AFTAP for the plan year is under 60 percent.

436(e)(1), 1.436-1(e)(1)  
Rev. Rul. 2012-4, 2012-8, I.R.B. 386

**V. Sponsor in Bankruptcy**

**Line a.** A plan must provide that during any period in which the plan sponsor is a debtor under Title 11, United States Code, or similar Federal or State law, a participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD that occurs during such period, except for payments made within a plan year with an ASD that occurs on or after the date on which the plan's enrolled actuary certifies that the plan's AFTAP for that plan year is not less than 100 percent.

This limitation does not apply to any payment of a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).

436(d)(2)  
1.436-1(d)(2)

**Line b.** A plan must also provide that during any period in which the plan sponsor is a debtor under Title 11, United States Code, or similar Federal or State law, the plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a plan year that is on or after the date on which the plan's enrolled actuary certifies that the plan's AFTAP for that plan year is not less than 100 percent.

436(d)(2)  
1.436-1(d)(2)

**VI. Requirements After Limitations Cease to Apply**

**Line a.** If a limitation on prohibited payments applied to the plan as of a section 436 measurement date, but that limit no longer applies to the plan as of a later section 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date.

The plan may provide that, after the section 436 measurement date on which the limitation on prohibited payments under section 436(d)(3) and lines III.a. and b. of the worksheet ceases to apply to the plan, any participant or beneficiary who had an ASD within the period during which that limitation applied to the plan is permitted to make a new election (within 90 days after the section 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new ASD to be

changed for the remaining value of the participant or beneficiary's benefit under the plan, subject to the other rules of section 436 and applicable requirements of section 401(a), including spousal consent.

The plan may also provide that, after the section 436 measurement date on which the limitation on prohibited payments under section 436(d)(1) and lines IV.a. and b. or lines V.a. and b. of the worksheet ceases to apply to the plan, any participant or beneficiary who had an ASD within the period during which that limitation applied to the plan is permitted to make a new election (within 90 days after the section 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new ASD to be changed for the remaining value of the participant or beneficiary's benefit under the plan, subject to the other rules of section 436 (including section 436(d)(3)) and applicable requirements of section 401(a), including spousal consent.

1.436-1(a)(4)

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**Line b.** The plan must provide that benefit accruals resume after the limitation on benefit accruals under section 436(e)(1) and line IV.d. of the worksheet ceases to apply to the plan (unless the plan otherwise provides that accruals are frozen), and that the plan shall comply with rules relating to partial years of participation and the prohibition on double proration under applicable DOL regulations 29 CFR 2530.204-2(c) and (d).

436(i)  
1.436-1(a)(4)

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**Line c.** The plan may provide that benefit accruals that were not permitted to accrue because of the limitation of section 436(e)(1) and line IV.d. of the worksheet shall be automatically restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the plan's enrolled actuary certifies that the AFTAP for the plan year would not be less than 60 percent taking into account any restored benefit accruals for the prior plan year.

436(i)  
1.436-1(a)(4), 1.436-1(c)(3)

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**Line d.** If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the plan year is not permitted to be paid after the occurrence of the event because of the limitation of section 436(b)(1) and line IV.c. of the worksheet, but is permitted to be paid later in the same plan year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the AFTAP for the plan year that meets the requirements of Regs. section 1.436-1(g)(5)(ii)(B)), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the plan (determined

without regard to section 436(b)(1)). If the unpredictable contingent event benefit does not become payable during the plan year in accordance with the preceding sentence, then the plan is treated as if it does not provide for that benefit.

436(i)  
1.436-1(a)(4)

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**Line e.** If a plan amendment does not take effect as of the effective date of the amendment because of the limitation of section 436(c)(1) or (e)(1) and lines III.c. or IV.d. of the worksheet, but is permitted to take effect later in the same plan year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the AFTAP for the plan year that meets the requirements of Regs. section 1.436-1(g)(5)(ii)(C)), then the plan amendment must automatically take effect as of the first day of the plan year (or, if later, the original effective date of the amendment). If the plan amendment cannot take effect during the same plan year, then it shall be treated as if it were never adopted, unless the plan amendment provides otherwise.

436(i)  
1.436-1(a)(4)

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## VII. Presumptions

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Section 436(h) and Regs. section 1.436-1(h) set forth a series of presumptions that apply (1) before the plan's enrolled actuary issues a certification of the plan's AFTAP for the plan year and (2) if the plan's enrolled actuary does not issue a certification of the plan's AFTAP for the plan year before the first day of the 10<sup>th</sup> month of the plan year (or if the plan's enrolled actuary issues a range certification for the plan year pursuant to Regs. section 1.436-1(h)(4)(ii) but does not issue a certification of the specific AFTAP for the plan by the last day of the plan year). For any period during which a presumption applies to the plan, the limitations under section 436 are applied to the plan as if the AFTAP for the plan year were the presumed AFTAP determined under the rules of section 436(h) and Regs. section 1.436-1(h)(1), (2), or (3).

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**Line a.** If a limitation applied to the plan on the last day of the preceding plan year, then, commencing on the first day of the current plan year and continuing until the plan's enrolled actuary issues a certification of the AFTAP for the plan for the current plan year, or, if earlier, the date line VII.b. or line VII.c. of the worksheet applies to the plan:

(1) The AFTAP of the plan for the current plan year is presumed to be the AFTAP in effect on the last day of the preceding plan year; and

(2) The first day of the current plan year is a section 436 measurement date.

436(h)(1)  
1.436-1(h)(1)

**Line b.** If the plan's enrolled actuary has not issued a certification of the AFTAP for the plan year before the first day of the 4<sup>th</sup> month of the plan year and the plan's AFTAP for the preceding plan year was either at least 60 percent but less than 70 percent or at least 80 percent but less than 90 percent, or is described in Regs. section 1.436-1(h)(2)(ii), then, commencing on the first day of the 4<sup>th</sup> month of the current plan year and continuing until the plan's enrolled actuary issues a certification of the AFTAP for the plan for the current plan year, or, if earlier, the date line VII.c. applies to the plan:

(1) The AFTAP of the plan for the current plan year is presumed to be the plan's AFTAP for the preceding plan year reduced by 10 percentage points; and

(2) The first day of the 4<sup>th</sup> month of the current plan year is a section 436 measurement date.

436(h)(3)  
1.436-1(h)(2)

**Line c.** If the plan's enrolled actuary has not issued a certification of the AFTAP for the plan year before the first day of the 10<sup>th</sup> month of the plan year (or if the plan's enrolled actuary has issued a range certification for the plan year pursuant to Regs. section 1.436-1(h)(4)(ii) but has not issued a certification of the specific AFTAP for the plan by the last day of the plan year), then, commencing on the first day of the 10<sup>th</sup> month of the current plan year and continuing through the end of the plan year:

(1) The AFTAP of the plan for the current plan year is presumed to be less than 60 percent; and

(2) The first day of the 10<sup>th</sup> month of the current plan year is a section 436 measurement date.

436(h)(2)  
1.436-1(h)(3)

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## VIII. Special Rules

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**Line a.** The limitations of:

(1) Section 436(b)(1) and line IV.c. of the worksheet (regarding unpredictable contingent event benefits),

(2) Section 436(c)(1) and line III.c. of the worksheet (regarding plan amendments increasing plan liability for benefits), and

(3) Section 436(e)(1) and lines IV.d. and e. of the worksheet (regarding benefit accruals)

do not apply to a new plan for the first 5 plan years of the plan, determined under the rules of section 436(g) and Regs. section 1.436-1(a)(3)(i).

436(g)  
1.436-1(a)(3)(i)

**Line b.** The limitations on prohibited payments do not apply to prohibited payments that are made to carry out the termination of the plan in accordance with applicable law. Any other limitations under section 436 do not cease to apply as a result of termination of the plan.

1.436-1(a)(3)(ii)

**Line c.** During any period in which none of the presumptions under Regs. section 1.436-1(h) and part VII. of the worksheet apply to the plan and the plan's enrolled actuary has not yet issued a certification of the plan's AFTAP for the plan year, the limitations under section 436(b)(1) and (c)(1) and lines III.c. and IV.c. of the worksheet shall be based on the inclusive presumed AFTAP for the plan, calculated in accordance with the rules of Regs. section 1.436-1(g)(2)(iii).

1.436-1(g) and (h)

**Line d.** For purposes of determining whether the limitations under section 436(d)(1) and (d)(3) and lines III.a., III.b., IV.a., and IV.b. of the worksheet apply to payments under a social security leveling option, within the meaning of section 436(j)(3)(C)(i), the AFTAP for a plan year is to be determined in accordance with the "Special Rule for Certain Years" under section 436(j)(3) and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.

For purposes of determining whether the accrual limitation under section 436(e)(1) applies to the plan, the AFTAP for a plan year is to be determined in accordance with the "Special Rule for Certain Years" under section 436(j)(3) (except as provided under section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).

These rules apply to plan years beginning on or after October 1, 2008 and before October 1, 2010 (plan years beginning after December 31, 2007 and before January 1, 2010, in the case of a plan for which minimum funding requirements are determined using a valuation date that is not the first day of the plan year).

436(j)(3)  
203(a) and (b) of PRA 2010

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## **IX. Multiple Employer Plans**

**Lines a. and b.** A multiple employer plan must specify whether the plan is either:

(i) a plan to which section 413(c)(4)(A) applies, including a plan for which the election described in section 413(c)(4)(B) has been made, in which case the requirements of section 436 apply separately to each employer under the plan; or

(ii) a plan to which section 413(c)(4)(A) does not apply, in which case, the requirements of section 436 apply as if each such employer maintained a separate plan.

436(l)  
1.436-1(a)(3)(iii)

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## **X. Effective Date**

Section 436 is generally effective for plan years that begin on or after January 1, 2008. In the case of a collectively bargained plan that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before January 1, 2008, section 436 does not apply to plan years beginning before the earlier of January 1, 2010, or the later of the date on which the last of such collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after August 17, 2006), or the first day of the first plan year to which section 436 would otherwise apply. Under sections 104 through 106 of PPA '06, later effective dates for section 436 also apply to eligible cooperative plans, within the meaning of section 104(c) of PPA '06, that were in existence on July 26, 2005, and certain other plans.

Section 202(b) of PRA 2010 amended section 104 of PPA '06 to provide that, in the case of an eligible charity plan (within the meaning of section 104(d) of PPA '06, as amended) that was in existence on July 26, 2005, section 436 is not effective in plan years beginning before the earlier of January 1, 2017, or the first plan year for which the plan ceases to be an eligible charity plan. The amendment made by section 202(b) of PRA 2010 applies to plan years beginning after December 31, 2007. However, under section 202(c)(2) of PRA 2010, a plan sponsor may instead elect to apply the amendment made by section 202(b) of PRA 2010 to plan years beginning after December 31, 2008. If the plan sponsor makes such an election, section 436 applies to the eligible charity plan for a plan year beginning after December 31, 2007, and before January 1, 2009, but does not apply to the plan for plan years beginning after December 31, 2008, and before the earlier of January 1, 2017, or the first plan year for which the plan ceases to be an eligible charity plan. Such an election must be made at such time and in such form and manner as prescribed by the Secretary and may be revoked only with the consent of the Secretary.

Except in the case of a collectively bargained plan or a plan described in sections 104 through 106 of the Pension Protection Act of 2006, the provisions of the plan relating to section 436 must be effective as of the first plan year beginning after December 31, 2007 or the effective date of the Plan, if later.

In the case of collectively bargained plans and plans described in sections 104 through 106 of the Pension Protection Act of 2006, the provisions of the plan relating to section 436 must be effective as of the effective date of section 436 with respect to the plan.

This explanation and the corresponding worksheet and checksheet reflect the requirements of section 1.436-1 of the final income tax regulations issued on October 15, 2009. For plan years beginning before January 1, 2010, a plan may have been operated in reliance on the proposed regulations or on Notices 2008-21, 2008-7 I.R.B. 431, and 2008-73, 2008-38 I.R.B. 717. If the plan's operation in plan years beginning on or after January 1, 2008 and before January 1, 2010, was not consistent with this Explanation No. 14 but satisfies the rules under a reasonable interpretation of section 436, the plan should specify the effective date as of which the plan reflected the rules of the final income tax regulations, and incorporate the requirements of section 436 by reference for earlier plan years beginning on or after the statutory effective date.

1.436-1(k)  
202(b) and (c) of PRA 2010

## CYCLE C Submission Period – 02/01/2013 – 01/31/2014

| Employee Benefit Plan<br>Defined Benefit Plans Section 436 Limitations<br>(Worksheet Number 14 – Determination of Qualification)   |   |   |            |           |            |
|--|---|---|------------|-----------|------------|
| <b>INSTRUCTIONS</b> – All items must be completed. A “Yes” answer generally indicates a favorable conclusion is warranted while a “No” answer indicates a problem exists. Please use the space on the worksheet to explain any “No” answer. See Publication 5139, Explanation Number 14, for guidance in completing this form. |   | The technical principles in this worksheet may be changed by future regulations or guidelines |            |           |            |
|  |   | Name of Plan  |            |           |            |
| <b>I.</b>  | <b>Plans Required to Satisfy IRC Section 436</b>  | <b>Plan Reference</b>   | <b>Yes</b> | <b>No</b> | <b>N/A</b> |
|  | a. Is the plan a single employer defined benefit plan that is subject to the minimum funding requirements of IRC section 412?<br><i>(Note: A multiple employer plan is considered a single employer plan for this purpose.)</i><br><br>If “no,” skip this worksheet.  |   |            |           |            |
|  | b. Has the plan sponsor amended the plan to satisfy section 436 by adopting the sample amendment in Notice 2011-96?<br><br>If “no,” skip to Part II.  |   |            |           |            |
|  | c. Is the plan sponsor entitled to rely on the sample amendment on and after the effective date of section 436 with respect to the plan?<br><br>If “yes,” do not complete the rest of this worksheet.   |   |            |           |            |
|  | d. In the case of a plan whose terms, as in effect for the period beginning September 1, 2005, and continuing through the end of a plan year in which the requirements of section 436 apply, provide for no benefit accruals with respect to any participants, does the plan provide that the limitations on prohibited payments described in parts III.a. and b., IV.a. and b., and V. do not apply to a plan year in this period? (Note that the plan language must provide for the limitations on prohibited payments in the event that the plan becomes subject to these limitations in the future.) [1400] |   |            |           |            |
| <b>II.</b>   | <b>Definitions and Incorporation of Regulations</b>   | <b>Plan Reference</b>   | <b>Yes</b> | <b>No</b> | <b>N/A</b> |
|  | a. Does the plan define the following terms in accordance with the regulations under section 436:   |   |            |           |            |
|  | (i) Adjusted funding target attainment percentage (AFTAP)? [1401]   |   |            |           |            |
|  | (ii) Annuity starting date (ASD)? [1402]  |   |            |           |            |
|  | (iii) Prohibited payment? [1403]  |   |            |           |            |
|  | (iv) Section 436 measurement date? [1404]   |   |            |           |            |
|  | (v) Unpredictable contingent event? [1405]  |   |            |           |            |
|  | (vi) Unpredictable contingent event benefit? [1406]   |   |            |           |            |
|  | (vii) Inclusive presumed adjusted funding target attainment percentage? [1407]  |   |            |           |            |



| II.  | Definitions and Incorporation of Regulations (cont'd)   | Plan Reference | Yes | No | N/A |
|------|---|----------------|-----|----|-----|
|      | b. Do the provisions of the plan relating to the limitations of section 436 specify that such provisions shall be interpreted and administered in accordance with IRC section 436 and section 1.436-1 of the Treasury Regulations? [1408]   |                |     |    |     |
| III. | AFTAP Less Than 80 Percent But Not Less Than 60 Percent   | Plan Reference | Yes | No | N/A |
|      | Does the plan provide that if the plan's AFTAP for a plan year is less than 80 percent but not less than 60 percent:  |                |     |    |     |
|      | <p>a. A participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD on or after the applicable section 436 measurement date, unless the present value of the portion of the benefit being paid in a prohibited payment does not exceed the lesser of:</p> <p>(i) 50 percent of the present value of the benefit payable in the optional form that includes the prohibited payment; or</p> <p>(ii) 100 percent of the PBGC maximum benefit guarantee amount? [1409]</p> <p><i>(Note: This limitation does not apply to a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).)</i></p> |                |     |    |     |
|      | <p>b. The plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment unless the present value of the portion of the benefit being paid in a prohibited payment does not exceed the limit described in line III.a. of this worksheet? [1410]</p> <p><i>(Note: This limitation does not apply to a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).)</i></p>   |                |     |    |     |
|      | <p>c. No amendment to the plan that has the effect of increasing plan liabilities shall take effect in the plan year? [1411]</p> <p><i>(Note: This limitation also applies if the plan's AFTAP for the plan year is 80 percent or more, but would be less than 80 percent if the amendment were taken into account in determining the AFTAP.)</i></p>   |                |     |    |     |
| IV.  | AFTAP Less Than 60 Percent  | Plan Reference | Yes | No | N/A |
|      | Does the plan provide that if the plan's AFTAP for a plan year is less than 60 percent:   |                |     |    |     |
|      | <p>a. A participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD on or after the applicable section 436 measurement date? [1412] <i>(Note: This limitation does not apply to a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).)</i></p>   |                |     |    |     |

| IV. | AFTAP Less Than 60 Percent (cont'd)  | Plan Reference | Yes | No | N/A |
|-----|--|----------------|-----|----|-----|
|     | b. The plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment? [1413]<br><i>(Note: This limitation does not apply to a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).)</i>  |                |     |    |     |
|     | c. If the plan provides any unpredictable contingent event benefit, the plan will not pay an unpredictable contingent event benefit with respect to any unpredictable contingent event occurring during the plan year? [1414]<br><i>(Note: This limitation also applies if the plan's AFTAP for the plan year is 60 percent or more, but would be less than 60 percent if the AFTAP were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the plan year is 100 percent.)</i>                     |                |     |    |     |
|     | d. Benefit accruals under the plan will cease as of the applicable section 436 measurement date and the plan may not be amended to increase plan liabilities by increasing benefits or establishing new benefits? [1415]   |                |     |    |     |
|     | e. If the plan accepts rollovers from a defined contribution plan to provide additional annuity benefits, no such rollovers will be accepted if the plan's AFTAP for the plan year is under 60 percent? [1416]   |                |     |    |     |
| V.  | Sponsor in Bankruptcy  | Plan Reference | Yes | No | N/A |
|     | Does the plan provide that during any period in which the plan sponsor is a debtor under Title 11, United States Code, or similar Federal or State law:  |                |     |    |     |
|     | a. A participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD that occurs during such period, except for payments made within a plan year with an ASD that occurs on or after the date on which the plan's enrolled actuary certifies that the plan's AFTAP for that plan year is not less than 100 percent? [1417]<br><i>(Note: This limitation does not apply to a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).)</i>      |                |     |    |     |
|     | b. The plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a plan year that is on or after the date on which the plan's enrolled actuary certifies that the plan's AFTAP for that plan year is not less than 100 percent? [1418]<br><i>(Note: This limitation does not apply to a benefit which may be immediately distributed without the consent of the participant under section 411(a)(11).)</i> |                |     |    |     |

| VI.  | Requirements After Limitations Cease to Apply   | Plan Reference | Yes | No | N/A |
|------|---|----------------|-----|----|-----|
|      | a. Does the plan provide for the resumption of prohibited payments for annuity starting dates that occur after a limitation on prohibited payments described in lines III.a. and b., IV.a. and b., or V.a. and b. of this worksheet ceases to apply to the plan? [1419]   |                |     |    |     |
|      | b. Does the plan:<br><br>(i) provide for the resumption of benefit accruals after the limitation on benefit accruals described in part IV.d. of this worksheet ceases to apply to the plan (unless the plan provides otherwise that accruals are frozen), and<br><br>(ii) provide that the plan shall comply with rules relating to partial years of participation and the prohibition on double proration under applicable DOL regulations 29 CFR 2530.204-2(c) and (d)? [1420]  |                |     |    |     |
|      | c. If the plan provides for automatic restoration of missed benefit accruals after the limitation on accruals described in part IV.d. of this worksheet ceases to apply to the plan, does the plan provide that such accruals will automatically be restored only if the continuous period of the limitation was 12 months or less and the plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the plan year would not be less than 60 percent taking into account any restored benefit accruals for the prior plan year? [1421] |                |     |    |     |
|      | d. If an unpredictable contingent event benefit with respect to an unpredictable event that occurs during the plan year is not permitted to be paid because of the limitation described in part IV.c. of this worksheet, but is then permitted to be paid later in the same plan year, does the plan provide that the benefit shall be paid retroactive to the period that the benefit would have been payable under the plan but for the limitation described in line IV.c? [1422]   |                |     |    |     |
|      | e. If a plan amendment does not take effect as of its effective date because of a limitation described in part III.c. or IV.d. of this worksheet, but is permitted to take effect later in the same plan year, does the plan provide that the amendment shall automatically take effect as of the first day of the plan year or, if later, the original effective date of the amendment? [1423]   |                |     |    |     |
| VII. | Presumptions  | Plan Reference | Yes | No | N/A |
|      | Does the plan provide that:   |                |     |    |     |
|      | a. If a limitation described in part III, IV, or V of this worksheet applied to the plan as of the last day of the preceding plan year, then, until the plan's enrolled actuary certifies the plan's AFTAP for the current plan year (or, if earlier, the date part VII.b. or part VII.c. of this worksheet applies to the plan), the AFTAP for the current plan year is presumed to be the AFTAP in effect on the last day of the preceding plan year? [1424]  |                |     |    |     |

| VII.  | Presumptions (cont'd)   | Plan Reference | Yes | No | N/A |
|-------|---|----------------|-----|----|-----|
|       | <p>b. If the plan's enrolled actuary has not certified the plan's AFTAP for the plan year before the first day of the 4<sup>th</sup> month of the plan year and the plan's AFTAP for the preceding year was either:</p> <p>(i) at least 60 percent but less than 70 percent,</p> <p>(ii) at least 80 percent but less than 90 percent, or</p> <p>(iii) is described in Regs. section 1.436-1(h)(2)(ii),</p> <p>then, as of the first day of the 4<sup>th</sup> month of the current plan year and until the plan's actuary certifies the plan's AFTAP for the current plan year (or, if earlier, the date line VI.c. of this worksheet applies to the plan), the AFTAP for the current plan year is presumed to be the plan's AFTAP for the preceding plan year reduced by 10 percentage points? [1425]</p> |                |     |    |     |
|       | <p>c. If the plan's enrolled actuary has not certified the plan's AFTAP for the plan year before the first day of the 10<sup>th</sup> month of the plan year (or if the plan's enrolled actuary has issued a range certification for the plan but has not issued a certification of the specific AFTAP for the plan by the last day of the plan year), then, as of the first day of the 10<sup>th</sup> month of the current plan year and continuing through the end of the plan year, the plan's AFTAP for the current plan year is presumed to be less than 60 percent? [1426]</p>   |                |     |    |     |
| VIII. | Special Rules   | Plan Reference | Yes | No | N/A |
|       | <p>a. In the case of a new plan, does the plan provide that the limitations described in lines III.c., IV.c., and IV.d. and e. of this worksheet do not apply to the plan for the first 5 plan years of the plan? [1427]</p>  |                |     |    |     |
|       | <p>b. Does the plan provide that the limitations on prohibited payments described in lines III.a. and b., IV.a. and b., and V.a. and b. of this worksheet do not apply to prohibited payments that are made to carry out the termination of the plan? [1428]</p>  |                |     |    |     |
|       | <p>c. Does the plan provide that the limitations described in parts III.c. and IV.d. of this worksheet shall be based on the inclusive presumed AFTAP for the plan if none of the presumptions described in part VII. of this worksheet apply to the plan and the plan's enrolled actuary has not yet certified the plan's AFTAP for the plan year? [1429]</p>  |                |     |    |     |
|       | <p>d. In the case of a plan that was subject to section 436 during the plan years affected by the "Special Rule for Certain Years under the Pension Relief Act of 2010, does the plan provide that these provisions shall be taken into account in determining the plan's AFTAP for a plan year for purposes of applying the affected limitations? [1430]</p>   |                |     |    |     |

## CYCLE C Submission Period – 02/01/2013 – 01/31/2014

| IX. | Multiple Employer Plans  | Plan Reference | Yes | No | N/A |
|-----|--|----------------|-----|----|-----|
|     | a. If the plan is a multiple employer plan to which IRC section 413(c)(4)(A) applies, including a plan for which the election described in section 413(c)(4)(B) has been made, does the plan provide that the limitations described in this worksheet apply separately to each employer under the plan as if each such employer maintained a separate plan? [1431]                     |                |     |    |     |
|     | b. If the plan is a multiple employer plan to which IRC section 413(c)(4)(A) does not apply, does the plan provide that the limitations described in this worksheet apply as if all participants in the plan are employed by a single employer? [1431]   |                |     |    |     |
| X.  | Effective Date   | Plan Reference | Yes | No | N/A |
|     | Are the limitations described in this worksheet effective under the plan for plan years beginning after December 31, 2007 (or the effective date of the plan, if later), or, in the case of certain collectively bargained plans and plans described in sections 104 through 106 of the Pension Protection Act of 2006, when section 436 is effective with respect to the plan? [1432] |                |     |    |     |

|                                 |   |      |
|---------------------------------|---|------|
| Form <b>14583</b><br>(May 2013) | Department of the Treasury – Internal Revenue Service<br><b>Employee Plan Deficiency Checksheet</b><br><b>Attachment 14 (Cycle C)</b><br><b>Section 436 Limitations - Defined Benefit Plans</b>   | Date |
| <i>For IRS Use</i>              | Please furnish the amendment(s) requested in the section(s) checked below.  |      |
| 1400<br>I.d.                    | Section _____ of the plan should be amended to provide that:<br>(i) the limitations on prohibited payments do not apply for a plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the plan year, provide for no benefit accruals with respect to any participants; and<br>(ii) this exception shall cease to apply as of the date any benefits accrue under the plan or the date on which a plan amendment that increases benefits takes effect.<br><i>Section 436(g)(4)</i>  |      |
| 1401<br>II.a.(i)                | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Adjusted funding target attainment percentage (AFTAP) – Regs. section 1.436-1(j)(1)   |      |
| 1402<br>II.a.(ii)               | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Annuity starting date (ASD) - Regs. section 1.436-1(j)(2)   |      |
| 1403<br>II.a.(iii)              | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Prohibited payment – Regs. section 1.436-1(j)(6)  |      |
| 1404<br>II.a.(iv)               | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Section 436 measurement date – Regs. section 1.436-1(j)(8)  |      |
| 1405<br>II.a.(v)                | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Unpredictable contingent event - Regs. section 1.436-1(j)(9)  |      |
| 1406<br>II.a.(vi)               | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Unpredictable contingent event benefit - Regs. section 1.436-1(j)(9)  |      |
| 1407<br>II.a.(vii)              | Section _____ of the plan should be amended to incorporate the definition of the following term by reference to the appropriate section of the Treasury Regulations:<br>Inclusive presumed adjusted funding attainment percentage - Regs. section 1.436-1(g)(2)(iii)  |      |
| 1408<br>II.b.                   | Section _____ of the plan should be amended to specify that the provisions of such section shall be interpreted and administered in accordance with IRC section 436 and section 1.436-1 of the Treasury Regulations.<br><i>Regs. Section 1.436-1</i>  |      |
| 1409<br>III.a.                  | Section _____ of the plan should be amended to provide that if the plan's AFTAP for the plan year is less than 80 percent but not less than 60 percent, a participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD date on or after the applicable section 436 measurement date, unless the present value of the portion of the benefit being paid in a prohibited payment does not exceed the lesser of:<br>(i) 50 percent of the present value of the benefit payable in the optional form that includes the prohibited payment; or<br>(ii) 100 percent of the PBGC maximum benefit guarantee amount (as defined in Regs. section 1.436-1(d)(3)(iii)(C)).<br><i>Regs. Section 1.436-1(d)(3)</i> |      |

|        |   |
|--------|---|
| 1410   | Section _____ of the plan should be amended to provide that if the plan's AFTAP for the plan year is less than 80 percent but not less than 60 percent, the plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment unless the present value of the portion of the benefit being paid in a prohibited payment does not exceed the lesser of:   |
| III.b. | (i) 50 percent of the present value of the benefit payable in the optional form that includes the prohibited payment; or<br>(ii) 100 percent of the PBGC maximum benefit guarantee amount (as defined in Regs. section 1.436-1(d)(3)(iii)(C)).<br><i>Regs. Section 1.436-1(d)(3)</i>  |
| 1411   | Section _____ of the plan should be amended to provide that no amendment to the plan that has the effect of increasing plan liabilities shall take effect in the plan year if the plan's AFTAP for the plan year is less than 80 percent but not less than 60 percent (or if the plan's AFTAP for the plan year is 80 percent or more, but would be less than 80 percent if the amendment were taken into account in determining the AFTAP).  |
| III.c. | <i>Regs. Section 1.436-1(c)</i>   |
| 1412   | Section _____ of the plan should be amended to provide that if the plan's AFTAP for the plan year is less than 60 percent, a participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD on or after the applicable section 436 measurement date.  |
| IV.a.  | <i>Regs. Section 1.436-1(d)(1)</i>  |
| 1413   | Section _____ of the plan should be amended to provide that if the plan's AFTAP for the plan year is less than 60 percent, the plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment.  |
| IV.b.  | <i>Regs. Section 1.436-1(d)(3)</i>  |
| 1414   | Section _____ of the plan should be amended to provide that the plan will not pay an unpredictable contingent event benefit with respect to any unpredictable contingent event occurring during the plan year if the plan's AFTAP for the plan year is less than 60 percent (or is 60 percent or more, but would be less than 60 percent if the AFTAP were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the plan year is 100 percent).  |
| IV.c.  | <i>Regs. Section 1.436-1(b)(1)</i>  |
| 1415   | Section _____ of the plan should be amended to provide that if the plan's AFTAP for the plan year is less than 60 percent, benefit accruals under the plan will cease as of the applicable section 436 measurement date and the plan may not be amended to increase plan liabilities by increasing benefits or establishing new benefits.   |
| IV.d.  | <i>Regs. Section 1.436-1(e)(1)</i>  |
| 1416   | Section _____ of the plan should be amended to provide that the plan will not accept rollovers from a defined contribution plan to provide additional annuity benefits when the plan's AFTAP for the plan year is less than 60 percent.   |
| IV.e.  | <i>Regs. Section 1.436-1(e)(1) and Rev. Rul. 2012-4, 2012-8 I.R.B. 386</i>  |
| 1417   | Section _____ of the plan should be amended to provide that during any period in which the plan sponsor is a debtor under Title 11, United States Code, or similar Federal or State law, a participant or beneficiary may not elect and will not be paid an optional form of benefit that includes a prohibited payment with an ASD that occurs during such period, except for payments made within a plan year with an ASD that occurs on or after the date on which the plan's enrolled actuary certifies that the plan's AFTAP for that plan year is not less than 100 percent.      |
| V.a.   | <i>Regs. Section 1.436-1(d)(2)</i>  |
| 1418   | Section _____ of the plan should be amended to provide that during any period in which the plan sponsor is a debtor under Title 11, United States Code, or similar Federal or State law, the plan will not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a plan year that is on or after the date on which the plan's enrolled actuary certifies that the plan's AFTAP for that plan year is not less than 100 percent. |
| V.b.   | <i>Regs. Section 1.436-1(d)(2)</i>  |
| 1419   | Section _____ of the plan should be amended to provide that if a limitation on prohibited payments applied to the plan as of a section 436 measurement date, but that limit no longer applies to the plan as of a later section 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later section 436 measurement date.   |
| VI.a.  | <i>Regs. Section 1.436-1(a)(4)</i>  |
| 1420   | Section _____ of the plan should be amended to provide that:  |
| VI.b.  | (i) if a limitation on benefit accruals applied to the plan as of a section 436 measurement date, but that limitation no longer applies to the plan as of a later section 436 measurement date, then benefit accruals shall resume prospectively and the limitation does not apply to benefit accruals that are based on service on or after that later   |

|                 |  |
|-----------------|--|
|                 | <p>section 436 measurement date, except as otherwise provided under the plan; and</p> <p>(ii) the plan shall comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor regulation 29 CFR § 2530.204-2(c) and (d).</p> <p><i>Regs. Section 1.436-1(a)(4)</i></p>   |
| 1421<br>VI.c.   | <p>Section _____ of the plan should be amended to provide that if a plan provides for the automatic restoration of benefit accruals after the limitation on accruals described in IRC section 436(e)(1) ceases to apply to the plan, such accruals will automatically be restored only if the continuous period of the limitation was 12 months or less and the plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the plan year would not be less than 60 percent taking into account any restored benefit accruals for the prior plan year.</p> <p><i>Regs. Section 1.436-1(a)(4)</i></p>  |
| 1422<br>VI.d.   | <p>Section _____ of the plan should be amended to provide that if an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the plan year is not permitted to be paid after the occurrence of the event because of the limitation of section 436(b)(1), but is permitted to be paid later in the same plan year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year that meets the requirements of Regs. section 1.436-1(g)(5)(ii)(B)), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the plan (determined without regard to section 436(b)(1)). If the unpredictable contingent event benefit does not become payable during the plan year in accordance with the preceding sentence, then the plan is treated as if it does not provide for that benefit.</p> <p><i>Regs. Section 1.436-1(a)(4)</i></p> |
| 1423<br>VI.e.   | <p>Section _____ of the plan should be amended to provide that if a plan amendment does not take effect as of the effective date of the amendment because of the limitation of section 436(c)(1) or section 436(e)(1), but is permitted to take effect later in the same plan year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year that meets the requirements of Regs. section 1.436-1(g)(5)(ii)(C)), then the plan amendment must automatically take effect as of the first day of the plan year (or, if later, the original effective date of the amendment). If the plan amendment cannot take effect during the same plan year, then it shall be treated as if it were never adopted, unless the plan amendment provides otherwise.</p> <p><i>Regs. Section 1.436-1(a)(4)</i></p>   |
| 1424<br>VII.a.  | <p>Section _____ of the plan should be amended to provide that if a limitation under section 436 applied to the plan as of the last day of the preceding plan year, then, the first day of the current plan year is a section 436 measurement date and as of that date and until the plan's enrolled actuary certifies the plan's AFTAP for the current plan year (or, if earlier, the date either of the rules described in Regs. section 1.436-1(h)(2) or (3) apply to the plan), the AFTAP for the current plan year is presumed to be the AFTAP in effect on the last day of the preceding plan year.</p> <p><i>Regs. Section 1.436-1(h)(1)</i></p>  |
| 1425<br>VII.b.  | <p>Section _____ of the plan should be amended to provide that if the plan's enrolled actuary has not certified the plan's AFTAP for the plan year before the first day of the 4th month of the plan year and the plan's AFTAP for the preceding year was either</p> <ul style="list-style-type: none"> <li>(i) at least 60 percent but less than 70 percent,</li> <li>(ii) at least 80 percent but less than 90 percent, or</li> <li>(iii) is described in Regs. section 1.436-1(h)(2)(ii),</li> </ul> <p>then the first day of the 4th month of the current plan year is a section 436 measurement date; and as of that date and until the plan's actuary certifies the plan's AFTAP for the current plan year (or, if earlier, the date the rule in Regs. section 1.436-1(h)(3) applies to the plan), the AFTAP for the current plan year is presumed to be the plan's AFTAP for the preceding plan year reduced by 10 percentage points.</p> <p><i>Regs. Section 1.436-1(h)(2)</i></p>   |
| 1426<br>VII.c.  | <p>Section _____ of the plan should be amended to provide that if the plan's enrolled actuary has not certified the plan's AFTAP for the plan year before the first day of the 10th month of the plan year (or if the plan's enrolled actuary has issued a range certification for the plan year pursuant to Regs. section 1.436-1(h)(4)(ii) but has not issued a certification of the specific AFTAP for the plan by the last day of the plan year), then, the first day of the 10th month of the current plan year is a section 436 measurement date, and as of that date and continuing through the end of the plan year, the plan's AFTAP for the current plan year is presumed to be less than 60 percent.</p> <p><i>Regs. Section 1.436-1(h)(3)</i></p>  |
| 1427<br>VIII.a. | <p>Section _____ of the plan should be amended to provide that the limitations under section 436, other than the limitations on prohibited payments) do not apply to the plan for the first 5 plan years of the plan, taking into account any predecessor plan.</p>  |



|                   |  |
|-------------------|--|
|                   | <i>Regs. Section 1.436-1(a)(3)(i)</i>  |
| 1428<br>VIII.b.   | Section _____ of the plan should be amended to provide that the limitations on prohibited payments do not apply to prohibited payments that are made to carry out the termination of the plan in accordance with applicable law.<br><i>Regs. Section 1.436-1(a)(3)(ii)</i>   |
| 1429<br>VIII.c.   | Section _____ of the plan should be amended to provide that during any period in which none of the presumptions under Regs. Section 1.436-1(h) apply to the plan and the plan's enrolled actuary has not yet issued a certification of the plan's AFTAP for the plan year, the limitations under sections 436(b)(1) and 436(c)(1) shall be based on the inclusive presumed AFTAP for the plan, calculated in accordance with the rules of Regs. section 1.436-1(g)(2)(iii).<br><i>Regs. Section 1.436-1(g) and (h)</i>   |
| 1430<br>VIII.d.   | Section _____ of the plan should be amended to provide that:<br>(i) for purposes of determining whether the limitations under section 436(d)(1) and 436(d)(3) apply to payments under a social security leveling option, within the meaning of section 436(j)(3)(C)(i), the AFTAP for a plan year shall be determined in accordance with the "Special Rule for Certain Years" under section 436(j)(3) and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service; and<br>(ii) for purposes of determining whether the accrual limitation under section 436(e)(1) applies to the plan, the AFTAP for a plan year shall be determined in accordance with the "Special Rule for Certain Years" under section 436(j)(3) (except as provided under section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).<br><i>Section 436(j)(3), Sections 203(a) and (b) of PRA 2010</i> |
| 1431<br>IX.a., b. | Section _____ of the plan should be amended to specify whether this is a multiple employer plan<br>(i) to which section 413(c)(4)(A) applies, and under which the limitations of section 436 apply separately with respect to each employer under the plan; or<br>(ii) to which section 413(c)(4)(A) does not apply, and under which the limitations of section 436 apply as if all participants in the plan are employed by a single employer.<br><i>Regs. Section 1.436-1(a)(3)(iii)</i>   |
| 1432<br>X.        | Section _____ of the plan should be amended to specify that such section is effective for plan years beginning after December 31, 2007 (or the effective date of the plan, if later), or, in the case of a collectively bargained plan or a plan described in sections 104 through 106 of the Pension Protection Act of 2006, as of the date section 436 is effective with respect to the plan.<br><i>Regs. Section 1.436-1(k), 202(b) and (c) of PRA 2010</i>   |